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UP AND DOWN WALL STREET

Solar Shares Will Rise, IPOs Won't; U.S. Judge Tosses Lawyer for Russian Defendants

The solar industry is too important to fail; small IPOs don't treat investors well; a U.S. judge tosses lawyer for Russian defendants.

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By **BILL ALPERT**

December 26, 2015

The Gambler's Fallacy says my luck at forecasting is about to turn, so pay heed.

I've lamented the dodgy accounting and tax tricks of solar-power firms like [SolarCity](#) (ticker: SCTY) and [SunEdison](#) (SUNE), and their shares stumbled badly this fall. But since my colleagues and I are looking ahead to 2016 in this issue, let me peer into the solar future. Solar energy is too crucial a resource for our overheated planet to neglect. As unhappy investors like Appaloosa Management's David Tepper shake up mismanaged companies like SunEdison, and the world weans itself from fossil fuel, solar stocks will find their footing. It's an industry that must succeed.

Despite the hyperbolic rise of many biotech start-ups, progress toward curing cancer will continue to be led by familiar pharmaceutical giants like [Bristol-Myers Squibb](#) (BMY), whose immunotherapy drugs let our immune system root out tumors. The steep prices of these treatments will help replace the drug industry's expiring patents, and are certainly a better way to spend our insurance dollars than the ripoffs of [Valeant Pharmaceuticals International](#) (VRX) and [Mallinckrodt](#) (MNK). But for the sake of us taxpayers, I hope Congress takes time off from lunching with industry lobbyists to let Medicare use its substantial buying power to bargain down drug prices.

AFTER MISPLACING ITS MOJO in the third quarter, the stock market recovered its verve, with the Dow about 8% higher from September through Thursday's close at 17,552. So why did the market for initial public offerings fall apart in 2015?

The years 2013 and 2014 were the best for initial public offerings since the tech bubble. But this year the number of deals fell by a third. And by the count of the folks at Renaissance Capital, more than half of 2015's 170-odd deals now trade below their offer price (leaving out microcap firms worth less than \$50 million). On average, the IPOs of 2015 lost 15% from their first day's close.

Remember the JOBS Act? At a hearing this month of the House Subcommittee on Capital Markets, Chairman Scott Garrett (R-N.J.) and others congratulated themselves on the success of the Jumpstart Our Business Startups Act, a 2012 law aimed at juicing the IPO market by freeing most new issuers from accounting and disclosure requirements that prior lawmakers had foolishly thought might protect investors. This month's Congressional hearing invited financiers and biotech firms to seek further easements for stock issuers, beyond the deregulations of the JOBS Act.

As usual, investors weren't well represented at the Congressional hearing.

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Garrett and his colleagues portray themselves as champions of small business, but, unsurprisingly, the beneficiaries of their legislation turn out to be the fat cats of investment banking and venture capital. Oh, and entrepreneurs seeking their reward before they have built a profitable business.

Unleashing lots of IPOs on the market seldom benefits investors. [GoPro](#) (GPRO) and [GrubHub](#) (GRUB) aren't isolated disappointments. More than 30 years of data collected by University of Florida finance professor Jay Ritter show the shares of IPOs underperform those of comparable companies by 2% to 3% a year.

Small-cap issuers—exactly the companies favored by the JOBS Act—serve investors the worst. Ritter's data through 2014 show that companies whose annual revenue exceeded \$1 billion when they went public averaged positive returns in their first three years. But big company IPOs are rare. Almost 94% of new issuers had sales under \$1 billion at their debut, and after three years as public companies their stocks had fallen an average of 20%. It isn't the fault of regulators. Survival is a struggle for small firms. Most fail for perfectly good economic reasons. If an investigational treatment for cancer is inside a big pharmaceutical company, instead of a stand-alone start-up, it might work out better for investors and cancer patients.

Other studies of the IPO market following the JOBS Act find the law had few effects, apart from a two-year jump in the number of offerings. Even the law's purported cost-savings for stock issuers seem to have been a mirage: Research suggests the "underpricing" of initial offerings by investment bankers was worse for companies covered by the JOBS Act, with the resulting first-day returns benefiting bankers and their stock-flipping cronies, instead of the corporate issuers.

The so-called "emerging growth companies" promoted by the JOBS Act aren't just lousy investments. Anyone who has been around securities markets for more than a few years knows small-cap stocks are also where most of the fraud is. Not all, but most. At its hearing this month, Garrett's subcommittee entertained proposals that would require the Securities and Exchange Commission to heed demands of a permanent panel of small-stock promoters and further loosen accounting rules for young public companies.

Our markets were regulated for the protection of investors, not Wall Street. Bankers and stock operators did just fine before the creation of the SEC. Garrett and his gang are promoting the wrong people's jobs.

I WAS GOING TO USE this space to alert you to a trial scheduled for Jan. 6 resulting from the federal government's seizure of cash and Manhattan real estate that prosecutors say they traced to a notorious theft of \$230 million from the Russian Treasury. That 2007 heist pushed hedge fund manager Bill Browder to become a human-rights campaigner after his Russia-focused fund's auditor, Sergei Magnitsky, was beaten to death in a Moscow prison for calling the theft an inside job by corrupt Russian officials. I've followed the money-laundering case ("[From Moscow to Manhattan, the Long Way](#)," Sept. 16, 2013), and my finding that the New York luxury properties were owned by companies controlled by Denis Katsyv, son of the powerful transportation minister for the Moscow Region, led to the government seizures. Katsyv has steadfastly denied that he, or the \$15 million in seized property, had anything to do with the Russian Treasury fraud, and he is not a defendant in the civil seizure case.

Last Friday, the trial—to decide whether the property was bought with proceeds from a crime and was therefore rightfully seized—was abruptly postponed when U.S. District Court Judge Thomas Griesa threw Katsyv's defense lawyer John W. Moscow and his prestigious law firm, BakerHostetler, off the case. BakerHostetler's recent pretrial arguments had taken the bizarre turn of trying to pin the Russian Treasury theft on Magnitsky and Browder, a claim that repeats the cant of Russian officials who have tried the Orwellian trick of charging these whistleblowers with the corruption they exposed. Magnitsky can't rebut these posthumous accusations, but Browder has done so, convincingly.

Judge Griesa found that the defense lawyers' attacks on Browder—a potential witness in the seizure trial—conflict with legal work John Moscow did for Browder in 2008, when the hedge fund manager was trying to figure out how his Hermitage Fund had been hijacked and used by thieves to fraudulently claim refunds of tax payments that Hermitage had

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made. Russian authorities said they were never able to trace the hundreds of millions stolen from their nation's citizens, but there is scant evidence that they tried.

John Moscow had been a celebrated anti-money-laundering prosecutor at the Manhattan district attorney's office before joining BakerHostetler, so Browder sought his help. Then the lawyer signed on as a defense attorney in the civil money-laundering case. "It was the ultimate betrayal," says Browder. "Lawyers should never be allowed to switch sides."

Moscow told me that his firm is appealing the disqualification. "This is a serious prejudice for our clients," adds his BakerHostetler colleague Mark Cymrot, who asserts that their defense of Katsyv has no relation to Moscow's earlier work for Browder and can't harm him.

Browder has had such success in getting Western governments to sanction Russian rulers that they seem to see his hand everywhere. When anticorruption activist Alexei Navalny presented evidence this month that the family of Russian Prosecutor General Yury Chaika had gotten rich in cahoots with a criminal gang, Chaika called the exposé a product of Browder and Western spy agencies. Russian authorities ignored Navalny's allegations, which Chaika denies.

Talking to me last week, Cymrot reiterated BakerHostetler's attack on the fund manager: "There is credible evidence that Hermitage and Bill Browder either defrauded the Russian Treasury or at least knew that the fraud was in progress before it happened." Not just Browder, but Western governments and Interpol have rejected Russia's charges against him as politically motivated.

It's routine for former prosecutors like Moscow to cash in as defense attorneys. He established his value in financial-crime prosecutions famous enough to have inspired movies like the 2009 thriller *The International*. A film is also in the works on the crusades of Browder and Magnitsky, but any portrayal of the lawyer's more recent work is unlikely to be as flattering.

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james mulligan

Dec 28, 2015

The Gambler's Fallacy [Fantasy], alas redundancy where would one be without it particularly during the Holiday Season.

Last week [12/21] I commented - What more could a spasmodic horse player ask for Christmas than a BARRON'S acronym TRIFCTA? ... Leading their selections to the post was FAST, a 10 year old [1,300 pgs.]. I am indebted to Mr. D 12/12 for Transportation Follies. Next my thanks to Mr F for ZIRP, a 7 year old which as he pointed out had a zip record and as I mentioned earlier has zapped 10s of millions of punters. But the \$aver was his FANG mention [a 4 horse entry] never touted. I had a FANG edge being familiar with their bloodline and courtesy of my brain supplement [Wiki] I could not help but sense an ebb & flow of certain similarities - Jack London - "Much of White Fang etc.

Now, my thanks to Mr. Alpert for a SUPERFETA filler JOBS. Goggle & Wiki failed me in my repeated attempts to determine the page content [1,300 above]. I was embarrassed to ask the assembled homestead palm-brainers from afar for fear of irrelevancy via a foreign voicing of an irrefutable reply, the role of scripted prepositions and conjunctions being of no consequence.

TOPIC - My Sabbath Daily Bugle readings [VT] did say solar is provided tax credits and that a 88k panels project is proposed in Ludlow.

Next event "Should old acquaintance be forgot, and never brought to mind?" ABSOLUTELY considering Dec. is a \$100Bn vig month!

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Herman Unanski

Dec 28, 2015

The second story in the article is very intriguing also. One wonders what is in store for the Russian people?

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Herman Unanski

Dec 28, 2015

Anyone with a science background realizes that nuclear is the only real energy solution long term. The fact that we have not had an energy POLICY since Obama came along only make things worse. He fought fracking and pushed ethanol every step of the way. When oil returns to \$100+ per barrel, we shall see who is correct. Don't throw away those coal co. shares just yet.

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Timothy Mortimer

Dec 27, 2015

<https://en.wikipedia.org/wiki/OpenIPO> .

-- This doesn't directly address the transparency issues with the JOBS Act, but it does seem to be an IPO process that is not structured in favor of "the fat cats of investment banking and venture capital" and is more beneficial for individual investors buying IPO shares on an exchange.

"Many traditional investment banks have balked at the idea of using an auction process, such as OpenIPO to engage in public securities offerings as this new method allows for equal access to the allocation of shares and eliminates the 'behind the scenes' dealings of shares and favorable treatment often found in conventional IPOs."

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WILLIAM ALPERT BARRON'S

Dec 28, 2015

Timothy,

Yep, auctions or even transparency into underwriters' pricing concessions are good ideas that bankers have opposed.

bill alpert

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Robert Walker

Dec 26, 2015

Mr.Alpert,

I am sorry I spelled your name incorrectly.Please accept my apology.

Bob W

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WILLIAM ALPERT BARRON'S

Dec 28, 2015

Bob,

No problem. My coworkers misspell it sometimes, and they're in the business of proofreading.

bill alpert

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